

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lihui Zhang *et al.*

Application No.: 10/676,409

Filed: October 1, 2003

For: DETERMINATION OF BEST
TRANSPORTATION GUIDELINES

Examiner: Iwarere, Oluseye

Group Art Unit: 3687

Confirmation No.: 8065

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Commissioner for Patents
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REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Appellants submit the following Reply Brief for consideration by the Board of Patent Appeals and Interferences (“Board”). This Reply Brief is responsive to the Examiner’s Answer of February 25, 2011. Please charge any additional amounts due or credit any overpayment to Deposit Account No. 02-2666.

I. Rejection of Claims 1-3 and 10-13 under 35 U.S.C. § 112, Sixth Paragraph

Claims 1-3 are rejected under 35 U.S.C. § 112, sixth paragraph, as allegedly failing to set forth the subject matter which the Appellants regard as the invention. The Appellants submit that the limitations of claims 1-3 are not means-plus-function limitations and thus do not invoke 35 U.S.C. § 112, sixth paragraph.

M.P.E.P. § 2181(I) sets forth a three-prong analysis for determining whether a claim limitation is presumed to invoke 35 U.S.C. § 112, sixth paragraph: (A) the claim limitation must use the phrase “means for” or “step for;” (B) the “means for” or “step for” must be modified by functional language; and (C) the phrase “means for” or “step for” must not be modified by sufficient structure, material, or acts for achieving the specified function.

Claims 1-3 recite a demand order module, a transportation guideline module, a route determination module, a loading module, a processing device, and a storage device. Claims 1-3 do not include the phrase “means for” or “step for” and thus triggers a presumption that 35 U.S.C. § 112, sixth paragraph, does not apply. Furthermore, claims 1-3 do not include elements which the Appellants have identified as being a means-plus-function element. Thus, Appellants have in effect indicated that claims 1-3 are not intended to contain any means-plus-function elements despite the format of any individual claim element. The Appellants’ intention that claims 1-3 are not to include means-plus-function elements is further supported by the limitations of a processing device in claim 1 and a storage device in claim 2. Claim 1 thus includes a structure (i.e., the processing device) that executes a module that is stored on the storage device to perform the claim elements. Therefore, the Appellants submit that claims 1-3 do not invoke 35 U.S.C. § 112, sixth paragraph.

In regard to the element “a demand order module to receive an order,” the recited demand order module is understood to describe a structure rather than simply a substitute for the phrase “means for.” The Appellants’ Specification provides a description of the demand order module on page 7 line 33 – page 4 line 2. This section states “demand order module 205 may be a data structure that stores and tracks a set of products.” Thus, the recited demand order module is a data structure that stores an order. Therefore, the element “a demand order module” does not invoke 35 U.S.C. § 112, sixth paragraph.

In regard to the element “a transportation guideline module including a set of constraints for a shipment,” the recited transportation guideline module is understood to describe a structure rather than simply a substitute for the phrase “means for.” The Appellants’ Specification provides a description of the transportation guideline module on page 8 lines 11-12. This section states “an order guideline module 207 is a data structure that includes a set of order guidelines. Thus, the recited transportation guideline module is a data structure that includes a set of constraints. Therefore, the element “a transportation guideline module” does not invoke 35 U.S.C. § 112, sixth paragraph.

In regard to the element “a route determination module to select at least one source location,” the recited route determination module is modified by a structure for executing the route determination module. Claim 1 further recites “a processing device to execute the route determination module.” Additionally, claim 2 recites “a storage device to store at least one of the demand order module, the transportation guideline module, and the route determination module.” Thus, the route determination module is stored on the storage device and executed by the processor to perform the function of selecting a source location. Therefore, the element “a route determination module to select at least one source location” does not invoke 35 U.S.C. § 112, sixth paragraph.

For at least the above reasons, claims 1-3 do not include means-plus-function elements and thus do not invoke 35 U.S.C. § 112, sixth paragraph. Accordingly, the Appellants respectfully request that this rejection be reversed.

Claims 10-13 are rejected under 35 U.S.C. § 112, sixth paragraph, as allegedly failing to set forth the subject matter which the Appellants regard as the invention. A supplemental amendment has been submitted in a separate paper in which claims 10-13 are canceled. In view of the amendment, the rejection of claims 10-13 under 35 U.S.C. § 112, sixth paragraph, is now moot.

II. Rejection of Claims 1, 2, 4, 5, 7-9, 14-16, 18, and 19 Under 35 U.S.C. §103(a) based on Arunapuram and Morimoto

Claims 1, 2, 4, 5, 7-9, 14-16, 18, and 19 remain rejected under 35 U.S.C. §103(a) as being obvious over Arunapuram, et al. (U.S. Patent Publication No. 2002/0019759) (“Arunapuram”), in view of Morimoto (U.S. Patent No. 7,035,856) (“Morimoto”). To establish a *prima facie* case of obviousness, the Examiner must provide some articulated reasoning to support the conclusion of obviousness. KSR International Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741, 82 USPQ2d 1385 (2007) (quoting In re Kahn, 441 F.3d 977, 988, USPQ2d 1329, 1336 (Fed. Cir. 2006)).

The Appellants note that the Examiner has not responded to or rebutted any of the arguments set forth in the Reply Brief filed on November 30, 2009 (“Previous Reply Brief”). The Response to Argument section on pages 31-34 of the Examiner’s Answer mailed February 25, 2011, (“Second Examiner’s Answer”) is copied without alterations from the Response to Argument section on pages 17-19 of the Examiner’s Answer mailed October 14, 2009 (“First Examiner’s Answer”). The Examiner’s statements in the Response to Argument sections of the First and Second Examiner’s Answers are rebutted in the Previous Reply Brief. Therefore, the Appellants refer the Board to these unrebutted arguments in support of the Appellants’ position that claims 1, 2, 4, 5, 7-9, 14-16, 18, and 19 are not obvious over the combination of Arunapuram and Morimoto. The Appellants briefly highlight the arguments of the Appeal Brief and the Previous Reply Brief herein below.

1) Independent Claims 1, 4, and 14; Dependent Claims 2, 5, 7-9, 15, and 19

Independent claims 1, 4, and 14 recite “a route determination module to *select* at least one source location *from the set of source locations having the set of products* when the order for the set of products is fulfilled” (emphasis added) or analogous aspects. The Examiner maintains the position that Morimoto teaches these aspects and again cites the Abstract and item 100 of Figure 5 of Morimoto. The Examiner again states that the regional shipping companies equate to a set of source locations and a package is received by a source location in order to be shipped. *See* Second Examiner’s Answer, pages 12 and 32. The Examiner’s reliance on Morimoto is an exact restatement of the Examiner’s position from pages 4 and 17 of the First

Examiner's Answer and is rebutted by the arguments set forth in the Appeal Brief and the Previous Reply Brief. As noted in the Appeal Brief, the regional shipping companies of Morimoto that allegedly equate to the recited source locations do not have the products to be shipped when the order for the products is fulfilled. As further elaborated in the Previous Reply Brief, the **requestor** requesting quotes from the regional shipping companies has the products to be shipped when the order is fulfilled, as depicted in item 100 of Figure 5 of Morimoto. At this point, none of the regional shipping companies have any products because the products are still with the requestor. Thus, the Appellants refer the Board to these unrebutted arguments from the Previous Reply Brief in support of the Appellants' position that Morimoto does not teach the above limitations.

Accordingly, the Examiner has not established a *prima facie* case of obviousness for all the limitations of the independent claims, including "a route determination module to select at least one source location from the set of source locations having the set of products when the order for the set of products is fulfilled." In view of the foregoing, the Appellants respectfully request reversal of these rejections.

2) Claim 16

Claim 16 recites "the set of order guidelines includes a default order guideline." The Examiner maintains the position that Arunapuram teaches these aspects and again cites page 18, column 2, lines 43-46, and paragraph [0011] of Arunapuram. *See* Second Examiner's Answer, pages 19 and 33. The Examiner's reliance on Arunapuram is an exact restatement of the Examiner's position from pages 12 and 18 of the First Examiner's Answer and is rebutted by the arguments set forth in the Appeal Brief and the Previous Reply Brief. As noted in the Appeal Brief, Arunapuram is silent regarding a default order guideline. The Examiner does not explain how updating an order status, as disclosed in Arunapuram, teaches a default order guideline. As noted in the Previous Reply Brief, the First Examiner's Answer does not provide any explanation as to why this limitation would be obvious other than it would be "allow[ed]" in Arunapuram. As set forth in the M.P.E.P. and *KSR International*, an allegation that this limitation would be allowed in the cited reference does not establish a *prima facie* case of obviousness. Thus, the Appellants refer the Board to these unrebutted arguments from the Previous Reply Brief in

support of Appellants' position that Arunapuram does not teach the above limitations. Accordingly, reconsideration and reversal of this rejection is respectfully requested.

3) Claim 18

Claim 18 recites "no product of the set of products is associated with more than one default order guideline." The Examiner maintains the position that Arunapuram teaches these aspects and again cites paragraphs [0038] and [0011] of Arunapuram. *See* Second Examiner's Answer, pages 20 and 34. The Examiner's reliance on Arunapuram is an exact restatement of the Examiner's position from pages 12 and 19 of the First Examiner's Answer and is rebutted by the arguments set forth in the Appeal Brief and the Previous Reply Brief. As noted in the Appeal Brief, Arunapuram does not disclose an association of products with default order guidelines. As noted in the Previous Reply Brief, the First Examiner's Answer does not identify any default order guidelines in Arunapuram, much less the aspect that products cannot be associated with "more than one default order guideline." Thus, the Appellants refer the Board to these unrebutted arguments from the Previous Reply Brief in support of the Appellants' position that Arunapuram does not teach the above limitations. Accordingly, reconsideration and reversal of this rejection is respectfully requested.

III. Rejection of Claims 3, 6, and 17 Under 35 U.S.C. § 103(a) based on Arunapuram and Cappellini

Claims 3, 6, and 17 remain rejected under 35 U.S.C. § 103(a) as being obvious over Arunapuram, in view of Cappellini (U.S. Publication No. 2003/0014286) ("Cappellini"). Claims 3, 6, and 17 depend from independent claims 1, 4, and 14, respectively, and thus incorporate the limitations thereof. Since the independent claims were rejected under Arunapuram and Morimoto, the Appellants assume that the Examiner intended to reject dependent claims 3, 6, and 17 under Arunapuram, Morimoto, and Cappellini, rather than Arunapuram and Cappellini. The Examiner does not indicate and the Appellants do not discern any part of Cappellini that cures the aforementioned deficiencies of Arunapuram and Morimoto regarding the independent claims. For at least the above reasons regarding the independent claims, Arunapuram, Morimoto, and Cappellini, alone or in combination, do not teach or suggest all the limitations of claims 3, 6, and 17. Reconsideration and reversal of these rejections are respectfully requested.

For the reasons set forth above, the Appellants respectfully request that the Board overturn the rejections of claims 1-9 and 14-19.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

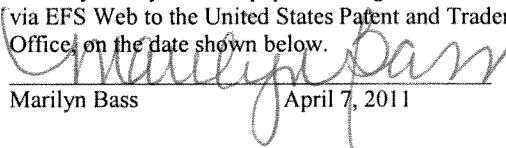
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